

United States Senate

WASHINGTON, DC 20510

November 29, 2023

William Thomas
Global Chairman and Chief Executive
Officer
KPMG
1801 K Street, NW Suite 12000
Washington, DC 20006

Dear Mr. Thomas:

We are writing regarding KPMG’s role in assisting large U.S. corporations offshore their profits and avoid paying billions of dollars of U.S. taxes. Last month, Microsoft disclosed that the Internal Revenue Service (IRS) was seeking \$28.9 billion – plus penalties and interest – in unpaid taxes because the company was illegally allocating profits to a foreign subsidiary in Puerto Rico from 2004 to 2013.¹ Reports reveal that KPMG designed this “pure tax play” for Microsoft, and implemented similar schemes for other large U.S. corporations.²

The IRS appears to be alleging that this KPMG-directed tax restructuring violated transfer pricing laws, which regulate the payments large corporations send to their related businesses.³ According to a 2020 ProPublica report, the scheme was simple: Microsoft sold its intellectual property (IP) rights to a tiny factory in Puerto Rico at an extreme – and illegal – discount, and then paid that subsidiary billions for the rights to use this IP.⁴ As a result, Microsoft reported extraordinary profits in Puerto Rico, where KPMG had secured the company a near-zero percent tax rate.⁵

KPMG’s plan was so egregious that Microsoft executives did all they could to shield themselves from legal liability. Before a planning discussion with KPMG consultants, a Microsoft executive told employees that a meeting with KPMG had to be “a white board briefing” with “no handouts and no email.” Others asked “[w]hat can we do to make this thing real?” In response, KPMG created complex accounting models to make the transfer prices appear legitimate. Once the

¹ U.S. Securities and Exchange Commission, Form 8-K Microsoft Corporation, October 11, 2023, <https://www.sec.gov/ix?doc=/Archives/edgar/data/789019/000119312523254151/d530324d8k.htm>; Microsoft, “An update on our IRS tax audit,” Daniel Goff, October 11, 2023, <https://blogs.microsoft.com/on-the-issues/2023/10/11/update-irs-audit/>.

² ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel, January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

³ Microsoft, “An update on our IRS tax audit,” Daniel Goff, October 11, 2023, <https://blogs.microsoft.com/on-the-issues/2023/10/11/update-irs-audit/>.

⁴ ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel, January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

⁵ *Id.*

factory was up and running, a Microsoft executive explained that the structure was “a pure tax play” that let the company start “claiming the tax benefit as planned.”⁶

KPMG’s counsel cemented Microsoft’s offshoring strategy. From just 1999 to 2008, Microsoft’s foreign pretax income as a percentage of U.S. figures exploded from 10 percent to 88 percent, despite foreign revenue increasing only 24 percent during that same time period.⁷ In Puerto Rico alone, according to IRS Examiner Eli Hoory, the company’s offshoring was so swift that “a company that was worth nothing or a nominal amount on June 30th, 2005, was worth \$30 billion one day later.”⁸

KPMG’s role in Microsoft’s tax evasion is deeply disturbing, indicating that KPMG helped Microsoft reward shareholders and executives, while depriving the federal government of billions in tax revenue needed to pay for health care, environmental protection, infrastructure, and more. But it does not end there. In their pitch to Microsoft executives, the KPMG team boasted that they had “significant experience in assisting Fortune 50 companies in the migration of . . . company assets to new deferral structures in several industries including technology, pharmaceuticals, and consumer products.”⁹ If true, KPMG clearly played a central role in the systematic offshoring of corporate profits, which has eroded the U.S. tax base and contributed to a sharp rise in economic inequality.¹⁰ Estimates show that the U.S. loses about \$90 billion a year due to offshoring.¹¹ Meanwhile, last year, U.S. corporations reported their highest profit margins in over 70 years – and rewarded their executives and shareholders handsomely.¹²

But with this notice against Microsoft, the IRS took a step toward holding corporations who aggressively offshore profits accountable. It means that, if successful, the government will be able to recoup funds to pay for priorities that help all Americans, not just those at the top. And it also represents what the IRS is capable of when funded properly. In August 2022, Democrats in Congress passed and President Biden signed into law the *Inflation Reduction Act*,¹³ which provided significant new funding for the IRS and established a 15 percent corporate minimum

⁶ *Id.*

⁷ Tax Notes, “Microsoft’s Cost-Sharing Arrangement: Frankenstein Strikes Again,” Stephen Curtis and Reuven Aviyonah, March 6, 2023, <https://www.taxnotes.com/featured-analysis/microsofts-cost-sharing-arrangement-frankenstein-strikes-again/2023/03/03/7fyck#7fyck-0000043>.

⁸ ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel, January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

⁹ *Id.*; ProPublica, “KPMG 2004 Pitch to Microsoft,” contributed by Paul Kiel, <https://www.documentcloud.org/documents/6556275-KPMG-2004-Pitch-to-Microsoft.html>.

¹⁰ Time, “How Giant Corporations Can still Get Out of Paying Taxes,” Alana Semuels, October 23, 2023, <https://time.com/6326583/tax-shelters-multinational-corporations/>; Brookings, “Rising inequality: A major issue of our time,” Zia Qureshi, May 16, 2023, <https://www.brookings.edu/articles/rising-inequality-a-major-issue-of-our-time/>.

¹¹ Washington Post, “Tax cheats deprive governments worldwide of \$427 billion a year, crippling pandemic response: study,” Jeanne Whalen, November 19, 2020, <https://www.washingtonpost.com/us-policy/2020/11/19/global-tax-evasion-data/>.

¹² Economic Policy Institute, “CEO pay has skyrocketed 1,460% since 1978,” Josh Bivens and Jori Kandra, October 4, 2022, <https://www.epi.org/publication/ceo-pay-in-2021/>; Bloomberg, “US Corporate Profits Soar With Margins at Wildest Since 1950,” Reade Pickert, August 25, 2022, <https://www.bloomberg.com/news/articles/2022-08-25/us-corporate-profits-soar-taking-margins-to-widest-since-1950#xj4y7vzkg>.

¹³ Inflation Reduction Act of 2022, Public Law 117-169.

tax – key steps in making sure that Microsoft and other giant corporations can no longer game the tax system. Since then, the IRS announced that the agency is using new funding to audit 60 of the largest corporations in areas such as “cross-border issues and corporate planning and transactions,” and sending compliance notices to 150 subsidiaries of large foreign corporations to “reiterate their U.S. tax obligations.”¹⁴

These steps will help crack down on decades of corporate tax evasion, large parts of which appeared to have been facilitated by KPMG. You owe Congress an explanation for your firm’s actions. We therefore ask that you provide answers to the following questions by December 13, 2023:

1. ProPublica indicated that Microsoft initially chose not to implement the transfer pricing tactic because it was “impractical,” but that the company changes its mind after “KPMG ... made a persuasive pitch.”¹⁵
 - a. At what point did KPMG begin giving tax advice to Microsoft?
 - b. Did Microsoft implement all recommendations by KPMG with regard to transfer pricing tactics used between 2004 and 2013? If not, which KPMG recommendations were rejected, and why?
 - c. Does Microsoft continue to have an ongoing relationship with KPMG for consulting services regarding tax practices? If not, when did this relationship end?
2. In a PowerPoint presentation to Microsoft executives in 2004, KPMG explained that the accounting firm had “significant experience in assisting Fortune 50 companies in the migration of ... company assets to new deferral structures in several industries including technology, pharmaceuticals, and consumer products.”¹⁶
 - a. Please list the companies that KPMG assisted in this way before making this pitch to Microsoft. Has the IRS audited any of these firms due to suspicion of transfer price or other violations in connection with these profit-shifting structures? If so, what were the issues raised and what was the outcome of each?
 - b. How many companies does KPMG have an ongoing relationship with regarding transfer price practices or other cross-border issues?
3. With which corporate Microsoft executives and employees did KPMG provide consultation while creating the Puerto Rican tax structure?
 - a. Of those, how many questioned the legality of KPMG’s recommendations?
4. How much did KPMG bill Microsoft for researching, presenting, and helping execute this Puerto Rican tax structure that is the subject of the IRS audit?

¹⁴ IRS, “IRS launches new initiatives using Inflation Reduction Act funding to ensure large corporations pay taxes owed; continues to improve service and modernize technology with launch of business tax account,” press release, October 20, 2023, <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account#:~:text=As%20new%20accountants%20come%20on,and%20corporate%20planning%20and%20transactions.>

¹⁵ ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel, January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

¹⁶ *Id.*; ProPublica, “KPMG 2004 Pitch to Microsoft,” contributed by Paul Kiel, <https://www.documentcloud.org/documents/6556275-KPMG-2004-Pitch-to-Microsoft.html>.

5. Describe KPMG's internal procedures for assuring adherence to applicable codes of conduct when providing tax services in connection with corporate structuring, including in particular advice and implementation services in connection with structures that involve the transfer of IP among related businesses.
6. Are you aware of whether the transfer price arrangement designed by KPMG for Microsoft was ever reviewed by Microsoft's outside auditor(s)?
 - a. If so, what concerns, if any, did they raise about the arrangement?
 - b. Are you aware of whether Microsoft's auditor(s) requested that Microsoft establish additional reserves for the tax benefits achieved through this arrangement?

Sincerely,



Elizabeth Warren
United States Senator



Bernard Sanders
United States Senator



Sheldon Whitehouse
United States Senator